

Bearer Share Regime

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Question on Bearer Share Regime

Q:

If the owners of bearer shares of a grandfathered bearer share company failed to deposit them with a custodian or to convert them to or exchange them for registered shares before 31 December 2009, what options are now available?



Question on Bearer Share Regime

A:

The Act provides a clear solution under Schedule 2, paragraph 35(4). The company or a person interested in the bearer share may apply to the Court to extend the transition date. The Court hearing the application may extend the transition date by such further period or periods not exceeding one year in total as it considers fit.



Question on Bearer Share Regime

Q:

Can the owners of disabled bearer shares in a grandfathered bearer share company deposit them with an authorised or recognised custodian to terminate their “disability”?



Question on Bearer Share Regime

A:

Depositing a disabled bearer share in a grandfathered bearer share company with a custodian would not cure the disability. The available mechanism for doing so lies in paragraph 35(4) of Schedule 2 under which an application may be made to the Court for an extension of time to deposit shares with a custodian or to exchange them for or convert them to registered shares.



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Question on Bearer Share Regime

Q:

Can a grandfathered bearer share company whose memorandum was amended by operation of law under section 34A(1) amend its memorandum to allow the company to issue bearer shares, convert registered shares to bearer shares or exchange registered shares to bearer shares?



Question on Bearer Share Regime

A:

The Act does not prevent a grandfathered bearer share company whose memorandum was amended by operation of law under section 34A(1) from amending its memorandum to allow for the issue of bearer shares and the conversion/exchange of bearer shares to registered shares. The provisions of section 13 would apply and the relevant application form is R204.



Question on Bearer Share Regime

Q:

Would the amendment “revive” the entitlements that were extinguished when the bearer shares were disabled?



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A:

The amendment would NOT serve to revive any entitlements that were extinguished when the bearer shares were disabled. This would require an application to the Court for an extension of time to deposit the shares with a custodian or to covert the shares to registered shares.



Question on Bearer Share Regime

Q:

Are registered agents required to provide the Commission with a list of companies that are authorised to issue bearer shares?



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A:

This is not a requirement under the financial services legislation. However the Commission may monitor compliance with the Act in the course of a compliance inspection or by a review of the prudential returns that are submitted by licensees.



Question on Bearer Share Regime

Q:

What action may be taken against a company that did not deposit its bearer shares with a custodian?



Question on Bearer Share Regime

A:

Under paragraph 37 of Schedule 2, the Commission may apply to the Court for the appointment of a liquidator under the Insolvency Act where a company has not deposited its shares with a custodian after the transition date. As with the exercise of any discretion, the Commission is required to act fairly and reasonably in exercising this power.

